

SERVICE DATE – JULY 31, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36202

BUCKINGHAM BRANCH RAILROAD COMPANY—CHANGE IN OPERATORS
EXEMPTION—CASSATT MANAGEMENT, LLC D/B/A BAY COAST RAILROAD

Digest:¹ This decision permits Buckingham Branch Railroad Company to assume operations on an expedited basis over lines of railroad near Norfolk, Va., that are currently served by Cassatt Management, LLC d/b/a Bay Coast Railroad.

Decided: July 27, 2018

On July 2, 2018, Buckingham Branch Railroad Company (BB), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to assume operations over the following rail lines: (1) a 2.6-mile rail line, owned by Canonie Atlantic Co. (Canonie) on behalf of the Accomack-Norhampton Transportation District Commission, extending between milepost 95.0 at Little Creek (Virginia Beach), Va., and milepost 97.6 at Camden Heights (Norfolk), Va.; and (2) a 4.2-mile rail line owned by Norfolk Southern Railway Company (NSR), extending between milepost SN 6.7 at Diamond Springs (Virginia Beach), Va., to milepost SN 2.5 at Coleman Place (Norfolk), Va. (collectively, the Lines). BB states that it will also utilize an additional four miles of trackage rights to facilitate interchange with NSR at Portlock Yard. According to BB, the Lines, which are currently operated by Cassatt Management, LLC d/b/a Bay Coast Railroad (BCR), represent two branches forming a “Y” with an overlapping convergence into the stem at Camden Heights. In its verified notice, BB states that BCR’s ability to continue operation of the Lines has recently become uncertain, and recent personnel departures at BCR have prompted BCR to press for terminating its Norfolk-area operations as soon as possible.² Notice of the exemption was published in the Federal Register on July 18, 2018 (83 Fed. Reg. 33,971).

Under 49 C.F.R. § 1150.42(e), an applicant is required to give notice of its intention to undertake a proposed change in operator to employees on the affected lines, notify the national

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² BB states that the circumstances here are related to those underlying the transaction in Delmarva Central Railroad—Change in Operator Exemption—Cassatt Management, LLC, FD 36196 (STB served Jun. 8, 2018).

offices of the labor unions with employees on the lines, and certify to the Board that it has done so, 60 days before consummation of the transaction. BB provided that certification on June 13, 2018.³ Accordingly, the earliest BB could consummate the transaction would be August 12, 2018 (60 days after the employee notification requirements were met).

However, concurrently with its verified notice of exemption, BB filed a petition for partial waiver of the 60-day notice period to allow the exemption to become effective on August 1, 2018. BB explains that BCR “has lost three of its four operating employees to voluntary retirement,” making ongoing service on the Lines by BCR “tenuous at best.” (Pet. 1.) BB states that there are six active shippers on the Lines whose service is threatened. (*Id.* at 3.) According to BB, partial waiver of the notice period would protect against disruption of rail service on the Lines and is consistent with the rail transportation policy of 49 U.S.C. § 10101. (*Id.* at 4.) BB states that partial waiver of the 60-day notice requirement is appropriate because of the exceptional circumstances here. (*Id.* at 4-5.)

BB also states that it has sought to comply with the spirit of the requirement by disseminating the required information “as fully, directly, transparently and quickly as possible.” (*Id.* at 3.) Moreover, BB states that BCR’s remaining operating employee, “if interested, will receive consideration for employment” from BB. (*Id.* at 4.) There are no filings in opposition to the request for partial waiver.⁴

For good cause shown, the Board will grant the unopposed petition and waive the 60-day notice period to the extent necessary to permit the exemption to take effect on August 1, 2018. While the Board takes seriously the requirements of 49 C.F.R. § 1150.42(e), the circumstances of this case indicate that a partial waiver is appropriate given the negative impact a potential service disruption would have on shippers on the Lines. Accelerating the effective date by reducing the 60-day notice period by 11 days would help ensure a continuation of service on the Lines.

³ BB certified that, on June 13, 2018, it posted notice of the transaction at the workplace of the sole, remaining BCR employee and mailed the notice to each of BCR’s former and current employees’ homes. BB further stated that BCR employees are not represented by any labor union.

⁴ On July 18, 2018, the Board received statements in support of BB’s petition from two shippers on the Lines, Dynaric, Inc., and Mid-Atlantic Transloading, Inc. Canonie, the owner of the Lines, filed a support statement on July 19, 2018.

It is ordered:

1. The petition for partial waiver is granted.
2. The 60-day notice period under 49 C.F.R. § 1150.42(e) is waived to the extent necessary to permit the exemption to take effect on August 1, 2018.
3. This decision is effective on its service date.

By the Board, Board Members Begeman and Miller.